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2 issues like subordination would come out and
3 potential challenges to allocation of claims and
4 different entities. But it wasn't something I
5 needed to express or write about in my
6 declaration, my view, to offer the opinions I was
7 offering. I could look at the foundation claims
8 that were being released and that was a sufficient
9 review, in my judgment, to allow me to reach the
10 conclusion I did regarding legal uncertainties.

11 Q. With respect to the opinion you
12 expressed on the range of reasonableness, which is
13 not included in Lipps No. 1, how much of your
14 opinion with respect to it falling -- the amounts
15 falling within the range of reasonableness took
16 into consideration defenses that the Debtors would
17 have by virtue of being Debtors?

18 MR. KERR: Objection.

19 A. I didn't take that into account in
20 reaching what I offered you today as a view on
21 range of reasonableness.

22 Q. Do you understand what the effect
23 of subordination of claims asserted by FGIC or the
24 trusts would have on their ability to recover on
25 claims?

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2 A. I think I testified before I don't
3 have an appreciation of the waterfall that would
4 be involved and how those numbers, if they were
5 subordinated, would shake out versus not
6 subordinated.

7 Q. Do you have an appreciation that if
8 a claim at GMAC M or RFC was subordinated to
9 claims of unsecured creditors, that no matter what
10 size of claim that existed, it would get a zero
11 recovery?

12 MR. KERR: Objection.

13 A. I have a sense that subordination
14 results in much less if not zero recovery than a
15 nonsubordinated claim. I, at least, have that
16 appreciation.

17 Q. Did you ever litigate a proof of
18 claim in a bankruptcy case?

19 A. Litigate? I've certainly filed
20 proofs of claim, and I've been involved in
21 discussions that fall off of that, but I don't
22 know that I've ever litigated in the sense of a
23 full-blown hearing or estimation proceeding or
24 something like that related to a proof of claim or
25 proofs of claim.

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2 Q. That was my next question.

3 Have you ever participated in a
4 claims estimation proceeding?

5 A. No.

6 Q. So what is your basis for
7 testifying as to the costs of litigating a proof
8 of claim versus litigating a claim asserted in a
9 federal or state court?

10 A. The basis is experience in these
11 cases with respect to the scope and the range of
12 discovery that is typically necessary and/or
13 requested in these types of claims, and I have the
14 added experience here of FGIC having served, I
15 think, some 117 document requests. So I can see
16 that the breadth and scope of what FGIC had
17 intended to do in discovery was commensurate with
18 what had been experienced in the MBIA cases and
19 what I had observed in other rep and warranty
20 cases. Obviously, it's -- from my experience as
21 special litigation counsel and in other cases,
22 it's more expedited in the context of a
23 bankruptcy. That doesn't necessarily mean that
24 the same work isn't done. It takes more people
25 and more time and the expense is still essentially

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2 there.

3 Q. Well, did you witness the
4 litigation of any RMBS proof of claim in these
5 cases beyond looking at what document requests
6 FGIC presented?

7 A. I don't know what you mean by
8 witness.

9 Q. Let's make this clear. You've
10 never been involved in an actual litigation of a
11 proof of claim in a bankruptcy case. Right?

12 A. I believe I testified to that.

13 Q. And I thought your testimony was
14 that your views with respect to the costs of
15 litigating a proof of claim were based upon
16 witnessing what FGIC had served as far as document
17 requests.

18 Is there anything else that you're
19 relying upon to substantiate your assumption that
20 the litigation of a proof of claim would have the
21 same costs and delay associated with litigating a
22 claim outside of bankruptcy?

23 MR. KERR: Objection.

24 A. The proofs of claim themselves.

25 Q. So we have the document requests

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2 and the proofs of claim.

3 Anything else that you're relying

4 on to substantiate your assumption?

5 A. Other than the experience I've
6 talked about in litigating these cases --

7 Q. Outside of bankruptcy.

8 A. Right, but you still have the same
9 discovery. I mean, I will tell you in the context
10 of the creditors committee 2004 requests that
11 started off, I mean, we were replicating a lot of
12 what had already been done in discovery. So I can
13 see the same thing in terms of scope and breath of
14 what's necessary happening with FGIC requests and
15 the proofs of claim. It's the same range of
16 claims and the same type of discovery.

17 As I said in the declarations, it's
18 different because I have a little bit of insight
19 into the specific space of this company, and I
20 know that the custodians, for example, that would
21 be associated with FGIC deals are not the same
22 custodians that we dealt with in MBIA. Just to do
23 a simple e-mail search is going to require
24 restoration, and work associated with that for
25 some 60 custodians is immense. Then you've got

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2 the number of loan files which I personally know
3 is more difficult now with the sale of the
4 platform; that you have got some of the loans
5 going to ACH 1 and others, and not always the
6 entire loan file goes there. So there's the
7 burden and expense associated with that.

8 I have some visibility into some
9 specifics that I know will come into play even in
10 the context of the bankruptcy and will impose
11 costs on the state.

12 Q. Did you ever prepare a budget for
13 the litigation of a proof of claim?

14 A. No.

15 Q. Do you ever prepare a timeline for
16 the litigation of a proof of claim?

17 MR. KERR: Any proof of claim at
18 all?

19 MR. SHORE: Yes.

20 A. I may have in the context of some
21 that I've filed in the past, but I can't recall
22 specifically.

23 Q. And have you ever prepared a
24 discovery plan for the litigation of a proof of
25 claim?

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2 A. I have been involved since I've
3 been special counsel in consulting with Morrison
4 and Foerster regarding discovery plans that would
5 be associated with potential challenges to proofs
6 of claim.

7 Q. Anything related to RMBS claims?

8 A. That would be what I was dealing
9 with was PLS and -- or private label securities
10 claims by security holders and RMBS.

11 Q. And what was your role in those
12 discussions?

13 A. Meetings and discussions with them
14 and sharing the experiences and advice that I have
15 and providing recommendations on types of
16 discovery to pursue against RMBS and/or PLS proof
17 of claim claimants and assessing whether we file
18 an adversary and seek discovery in that context or
19 whether we try and do it informally or through a
20 2004.

21 Q. Other than as special counsel to
22 the Debtors, have you ever been involved in
23 preparing a discovery plan for the litigation of a
24 proof of claim?

25 A. The only other context that I could